

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 30, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-0933-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TERESA L. MANTHE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Jefferson County:
JACQUELINE R. ERWIN, Judge. *Affirmed.*

EICH, C.J.¹ Teresa Manthe appeals from a judgment convicting her of operating a motor vehicle while intoxicated. She raises a single issue: whether the arresting officer had reasonable suspicion to stop and detain her for further investigation. We conclude that he did and affirm the judgment.

¹ This appeal is decided by a single judge pursuant to § 752.31(2)(c), STATS.

City of Jefferson Police Officer Gary Haag, while parked in a well-lighted lot adjacent to a convenience store at 2:00 a.m., saw Manthe's pickup truck pull out of a parking stall at the store. He saw the truck "back into a sign" and into a five-foot-high pile of bagged garden mulch on a pallet, and he heard a loud "thump." The sign, according to Haag, was approximately two feet by two feet in size and was approximately three feet off the ground on a wooden stand. The truck drove out of the lot and down the street. After a brief conversation with a sheriff's deputy who was also at the scene and who observed the collision, Haag followed the truck, noticing that it "was pretty far ahead of me." Haag caught up with the truck, reaching a speed "well over 40 miles per hour," turned on his flashers and stopped Manthe. Haag said that he did not notice any damage to the mulch pile, and that Manthe's truck did not appear to be doing anything "inappropriate" or "improper" as it left the lot. And when he activated his lights, Manthe pulled over "in an appropriate manner." Haag testified, however, that he believed Manthe had been traveling "well over the speed limit" as he entered the street behind her.

On that evidence, the trial court ruled:

It's bar time. The Defendant hit a sign about three feet high, two feet across; hit mulch bags piled over five feet high on a pallet; left without acknowledgment, investigation, replacement, repair—Although the collision was apparent to others—and it occurred within a stone's throw of two squad cars. At least one of them was marked; we know that because we heard about the red and blue lights. There's an officer outside; another one. There was speed in excess of the speed limit as the Defendant left that scene....

....

The court observes ... that an ordinarily observant and sober person ... would see the officers and take the prudent course of action to check for damage after the collision.

The State doesn't need to articulate a suspicion, but, rather, needs to present evidence from which an articulable suspicion can follow. A common knowledge would leave even an untrained person to suspect impaired operation, much less an officer.

Manthe's argument is brief and to the point. She maintains that Haag lacked a reasonable suspicion that she was doing anything wrong that night, and that "[t]here was absolutely nothing preventing ... [him] from following [her] vehicle for a reasonable period of time to confirm or dispel any unparticularized suspicions that may have arisen when he observed her bump the mulch pile."

A police officer may stop a person "for a reasonable period of time when [he or she] reasonably suspects that ... person is committing, is about to commit or has committed a[n offense] and may demand the person's name and address and an explanation of [the person's] conduct." Section 968.24, STATS. The test to determine whether an investigatory stop is valid is a common-sense test based on the concept of reasonableness. *State v. Jackson*, 147 Wis.2d 824, 831, 434 N.W.2d 386, 389 (1989); *State v. Guzy*, 139 Wis.2d 663, 675, 407 N.W.2d 548, 554 (1987). In general, "random stops of motor vehicles are unreasonable in the absence of an articulable and reasonable suspicion that the motorist is ... subject to seizure for violation of law." *Interest of L.L. v. Washington County Cir. Ct.*, 90 Wis.2d 585, 596, 280 N.W.2d 343, 348 (Ct. App.1979).

It is also true that police officers "are not required to rule out the possibility of innocent behavior before initiating a brief stop." *State v. Anderson*, 155 Wis.2d 77, 84, 454 N.W.2d 763, 766 (1990). Thus, "if any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, the officers have the right to temporarily detain the individual for the purpose of inquiry." *Id.*

While the reasonableness of a stop is a question of law which we review independently, owing no deference to the trial court, *State v. Waldner*, 206 Wis.2d 51, 54, 556 N.W.2d 681, 683 (1996), we believe the trial court's rationale for concluding that, under the applicable common-sense test of reasonableness, Officer Haag had reasonable suspicion of impaired driving sufficient to justify stopping Manthe, is unassailable, and we affirm its decision.

By the Court.—Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.

